



State of Washington
PUBLIC DISCLOSURE COMMISSION

711 Capitol Way Rm. 206, PO Box 40908 • Olympia, Washington 98504-0908 • (360) 753-1111 • FAX (360) 753-1112
Toll Free 1-877-601-2828 • E-mail: pdcc@pdcc.wa.gov • Website: www.pdca.wa.gov

9:00 a.m.
October 2, 2002

MINUTES – SPECIAL MEETING

John Cherberg Building
Senate Hearing Room 2
Capitol Campus
Olympia, Washington

COMMISSION MEMBERS PRESENT

Mike Connelly, Chair
Susan Brady, Vice Chair
Lois Clement, Secretary
Christine Yorozu, Member
Francis Martin, Member

STAFF PRESENT

Vicki Rippie, Executive Director
Susan Harris, Assistant Director
Nancy Krier, Asst. Attorney General
Linda Dalton, Sr. Asst. Attorney General
Ruthann Bryant, Secretary

The special meeting of the Public Disclosure Commission was called to order by Commission Chair Mike Connelly at 9:00 a.m. in the John Cherberg Building, Senate Hearing Room 2, Capitol Campus, Olympia, Washington.

Commissioner Comments

Commissioner Connelly noted that the Public Disclosure Commission was ranked second in the nation by the Center for Public Integrity for its standards of disclosure and enforcement efforts regarding political parties.

Citizen Comments/Concerns

No citizen comments or concerns were expressed.

Minutes

Motion 03-027

Moved by Commissioner Clement, seconded by Commissioner Brady:

The Commission adopts the minutes of the regular meeting of August 27, 2002, as written.

The motion passed unanimously.

Enforcement Matters
Report

*National Education Association
(NEA), Case #02-282*

Susan Harris reported on a citizen action letter filed by the Evergreen Freedom Foundation (EFF) against the National Education Association (NEA) for alleged violation of (1) RCW 42.17.760, using agency shop fees to influence an election or to operate a political committee without first obtaining affirmative authorization from the individuals in Washington State paying agency shop fees to the NEA; (2) RCW 42.17.040, failure to register the NEA's Ballot Measure/Legislative Crisis and Media Campaign Fund (Ballot/Media Fund) as a political committee; and (3) RCW 42.17.680(3), failure by the NEA to obtain written authorization prior to school districts in Washington State withholding a portion of employees' wages for contributions to the Ballot/Media Fund.

Ms. Harris noted that staff was prepared to report their findings to the Commission at its April 9, 2002, meeting however on April 8, 2002, the EFF filed it's own lawsuit against the NEA in Thurston County Superior Court alleging violations of RCW 42.17.760 and the Commission took no action at the April 9, 2002 meeting. On August 23, 2002, Thurston County Superior Court Judge Paula Casey dismissed the lawsuit filed by EFF against the NEA.

Ms. Harris summarized the case and reported that staff believes there were multiple violations of RCW 42.17.760 by the NEA because there was substantial reason to believe that between October 8, 1998 and September 20, 2000, the NEA used agency fee payer money to make contributions to influence an election or operate a political committee without having affirmative authorization from the individual fee payers and recommended the Commission refer the matter to the Office of the Attorney General for further action.

Ms. Harris also reported that staff recommends dismissal of alleged violations of RCW 42.17.040 since no money from NEA Washington members or agency fee payers was placed in the Ballot Fund. In addition, Ms. Harris stated that the Media Fund does not make political contributions and is also not required to report under 42.17.040. Staff also recommends dismissal of the alleged violation of RCW 42.17.680 since the NEA is not the employer or entity responsible for the disbursement of funds in payment of wages or salaries and has no legal obligation to obtain written authorizations from its members.

Richard Wilkof, attorney representing the NEA, stated that the NEA made contributions based on the revenue it had anticipated receiving for such purposes during the fiscal year, not on the revenue it had on hand.

Motion 03-028

Moved by Commissioner Brady, seconded by Commissioner Clement:

The Commission finds apparent multiple violations of RCW 42.17.760 by the National Education Association, PDC Case #02-282, and refers the matter to the Office of the Attorney General for appropriate action given the insufficiency of its penalty authority.

The motion passed unanimously.

Motion 03-029

Moved by Commissioner Brady, seconded by
Commissioner Yorozu:

**The Commission dismisses alleged
violations of RCW 42.17.040 and RCW
42.17.680 by the National Education
Association, PDC Case #02-282**

The motion passed unanimously.

Vicki Rippie was authorized to sign the orders on
behalf of the Commission.

Executive Session

The Commission went into executive session at
9:40 a.m. to discuss pending and potential
litigation with legal counsel.

Public Session

The Commission returned to public session at
10:10 a.m.

Personal Financial Affairs Reporting
New Modification Request

*Republican National State Elections
Committee*

Ms. Harris reported that the Republican National
State Elections Committee (RNSEC) requests a
two part modification: (1) a modification retroactive
from January 1, 2000, to the date of the
Commission meeting allowing it to satisfy the
requirements of RCW 42.17.090(1)(l) through the
filing of copies of the relevant portions of monthly
Federal Election (FEC) reports with the PDC
which the RNSEC supplemented by filing the C-5
forms in March and August 2002; and (2) a
modification effective from the date of the
Commission meeting through December 31, 2003,
to permit the RNSEC to satisfy the requirements of
RCW 42.17.090(1)(l) "by the filing of its monthly
FEC reports."

Ms. Harris stated that staff recommends that the
Commission grant the RNSEC's request for a

retroactive reporting modification because the RNSEC has demonstrated a manifestly unreasonable hardship and because the act would not be frustrated since:

- All FEC reports filed by the RNSEC were available through the FEC's website and the RNSEC had stated that it had filed copies of relevant portions of FEC reports with the PDC on a monthly basis; and
- The RNSEC has now filed all delinquent C-5 reports.

Ms. Harris added that staff recommends that the Commission grant the RNSEC a prospective modification from now through December 31, 2003 to allow it to satisfy RCW 42.17.090(1)(l) by filing its C-5 reports at the same time that its monthly FEC reports are due. Further, staff would also support granting a modification to raise the threshold for identifying Washington residents or corporations who contribute to the RNSEC from \$25 to \$50.

Republican National Committee Chief Counsel Thomas Josefiak, Deputy Counsel Charles Spies and Attorney John White, representing the Washington State Republican Party, addressed the Commission in support of the modification request.

Mr. Josefiak stated that as a national organization it is very difficult to determine exactly when a contribution is received making it nearly impossible to complete the C5 form in the required 10-day time period.

Motion 03-030

Moved by Commissioner Brady, seconded by Commissioner Yorozu:

The Commission grants the retroactive reporting modification to the Republican National State Elections Committee as requested. The Commission grants the prospective reporting modification allowing

C-5 reports to be filed in accordance with the monthly FEC reporting schedule and raised the threshold for reporting Washington state residents and corporations making donations from \$25 to \$50.

The Commission finds that literal application would cause a manifestly unreasonable hardship on the applicant and that a limited modification would not frustrate the purposes of the act.

The motion passed unanimously.

Executive Session

The Commission went into executive session at 11:10 a.m. to discuss pending and potential litigation with legal counsel.

Public Session

The Commission returned to public session at 12:00 p.m.

Petition for Rulemaking

Doug Ellis summarized a petition for rulemaking filed by Richard Pope on August 6, 2002 which involves forfeiture provisions of RCW 42.17.090(1)(I), and the Commission's rules adopted to implement that statute: WAC 390-16-050, Forms for contributions and expenditures of out-of-state or federal political committees, and WAC 390-16-055, Forfeiture of contributions received from out-of-state or federal political committees.

Mr. Ellis reported that staff requests the Commission deny the petition for rulemaking because the rules sought to be repealed are (1) the subject of a pending enforcement action filed by the same petitioner, who seeks application of the same rules sought to be repealed and (2) appropriate because they clarify and implement the provisions of RCW 42.17.090(1)(I).

Mr. Pope addressed the Commission and maintained that the rules should be repealed

because they are contrary to statutory provisions of Chapter 42.17 RCW and are unconstitutional.

Motion 03-031

Moved by Commissioner Brady, seconded by Commissioner Clement:

The Commission denies the Petition for Rulemaking to repeal WAC 390-16-050 and WAC 390-16-055.

The motion passed unanimously.

Enforcement Matters (cont.)

Phil Stutzman noted that the matter regarding Richard Benjamin has been withdrawn from the agenda.

John Potter, Case #03-029

Mr. Stutzman summarized the case against John Potter for alleged violations of RCW 42.17.050 and 42.17.240 for failing to file a Candidate Registration (PDC form C-1) and Personal Financial Affairs Statement (PDC form F-1). He noted that the case was scheduled for a brief enforcement hearing on September 10, 2002 where the Presiding Officer asked that the case be heard by the full Commission due to Mr. Potter's past history and previous unpaid penalties. Mr. Potter is a candidate for State Representative in Legislative District 11. He was required to file within two weeks of becoming a candidate. No reports have been submitted to date.

Motion 03-032

Moved by Commissioner Yorozu, seconded by Commissioner Martin:

The Commission finds a violation of RCW 42.17.050 and 42.17.240 in PDC Case #03-029, John Potter, and assesses a penalty of \$1,000.

The motion passed unanimously.

Requests for Review

*WA State Assn of Independent
Outpatient Programs,
Case #02-617*

Mr. Stutzman reported that a brief enforcement hearing was held June 4, 2002, in which the WA State Association of Independent Outpatient Programs (WSAIOP) was found in violation of RCW 42.17.180 for failure to file an Employer's Lobbying Expenses report by February 28, 2002. WSAIOP was assessed a penalty of \$500.

Mr. Stutzman commented that a signed lobbyist registration of Stephen Lindstrom showed WSAIOP as his employer, however staff has confirmed that Mr. Lindstrom had no lobbying expenses incurred or paid by WSAIOP during calendar year 2001.

Motion 03-033

Moved by Commissioner Yorozu, seconded by Commissioner Clement:

**The Commission vacates the order in PDC
Case #02-617, WA State Assn of
Independent Outpatient Programs.**

The motion passed unanimously.

Request for Reconsideration

St. Clair Woodworth, Case #02-619

Mr. Stutzman reported that at an enforcement hearing on July 23, 2002, Mr. Woodworth was found to have violated RCW 42.17.240 by failing to file the Statement of Financial Affairs by April 15, 2002. The Commission accepted a Stipulation of Facts, Violation and Penalty, found a single violation of RCW 42.17.240 and assessed a penalty of \$1,000. The Commission also ordered that this penalty of \$1,000 and a previously assessed penalty of \$1,000 be paid within thirty days of the Order.

Mr. Woodworth provided a letter requesting that the penalties for the two violations be reduced or

that a payment arrangement of \$200 per month be granted.

There was no motion to reconsider this matter.

The Commission agreed to a payment schedule of \$200 per month.

Advisory Matters

Susan Harris briefly summarized a draft amendment to the provisos on the penalty grids used by the presiding officer during brief enforcement hearings. The amendment would take into consideration any previously imposed penalties that remain unpaid and exceed the amount otherwise prescribed for the current violation.

Motion 03-034

Moved by Commissioner Clement, seconded by Commissioner Brady:

The Commission adopts the penalty grids as amended.

The motion passed unanimously.

Interpretation of RCW 42.17.100

Susan Harris reported on the application of RCW 42.17.100 reporting requirements when independent expenditures are made for more than one candidate or ballot proposition during an election campaign. According to RCW 42.17.100, independent expenditures of \$100 or more made during an election campaign by a person must be reported. Staff opined that the statute could be interpreted to require C-6 reporting when the total of the independent expenditures reach \$100 or when they reach \$100 per candidate or ballot proposition.

Given the low reporting threshold, staff recommends that the Commission adopt an interpretation concluding that a C-6 report is required only if the total attributed to supporting or opposing one candidate or ballot issue included in the expenditure is \$100 or more.

Motion 03-035

Moved by Commissioner Brady, seconded by
Commissioner Yorozu:

The Commission adopts Interpretation 02-02, Filing a Report of Independent Expenditures That Support or Oppose More Than One Candidate or Ballot Measure, as presented.

The motion passed unanimously.

Rule-Making

*WAC 390-17-100 Contribution
withholding authorizations*

Doug Ellis summarized a staff request that the Commission reconsider the draft amended language to WAC 390-17-100 which was approved at the August 27, 2002 Commission meeting. The language change is necessary as a result of Engrossed Senate Bill 6713 which removed the requirement to annually renew a request for payroll deduction of wages or salaries for contributions to political committees or for use as political contributions.

Mr. Ellis reported that by providing an option of using the exact statutory language in RCW 42.17.680(2) or a statement that more generically describes the protections of .680(2) would provide the Washington state labor community increased flexibility in the printing and distribution of withholding authorization forms while at the same time satisfying the intent of RCW 42.17.680.

Jim Oswald, representing the WA State Labor Council, addressed the Commission in support of the new language.

Motion 03-036

Moved by Commissioner Clement, seconded by
Commissioner Martin:

The Commission approves revised draft language for amending WAC 390-17-100, Contribution withholding authorizations, as proposed.

The motion passed unanimously.

Staff Reports

Executive Director

Vicki Rippie announced that the Office of Financial Management is required to do performance assessments on selected agencies to satisfy the provisions of Section 127 of Engrossed Substitute Senate Bill 6387, the supplemental operating budget. She added that the PDC is one of 88 agencies selected and the assessment will take place by October 18, 2002.

Assistant Director

Susan Harris updated the Commission on tracked local races and that reminders will be mailed to candidates regarding the 21-day pre-general reporting requirements.

Adjournment

Commissioner Connelly adjourned the meeting at 2:30 p.m. The next meeting is scheduled for Tuesday, October 29, 2002.

Approved by the Commission 10/29/02